IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 766 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE H.B.ANTANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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POPATBHAI PHULABHAI MARATHI

Versus

SHAKTI SONS PARTNER B.M. TAMUKAWALA & OTHERS

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Appearance :
MR DIPAK R DAVE for Appellant.
RULE SERVED for Respondents No. 1 - 2.
MR HASMUKH THAKKER for Respondent No.3

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CORAM : HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 19/12/2007

ORAL JUDGMENT

This is an appeal preferred by the original claimant under section 30 of the Workmen's Compensation Act, 1923 assailing the judgment and order dated 30.03.05 passed by the learned Commissioner, Workmen Compensation, Surat in W.C. N.F. Case No. 11 of 1993 by which the learned Commissioner has partly allowed the application and directed respondents No. 1 and 3 to pay an amount of Rs.425/- with interest at 6% from the date of application till realization and Rs.150/- towards costs. The learned Commissioner also directed respondent No.1 to pay penalty of Rs.213/-. Being aggrieved by the aforesaid judgment and order, the original claimant has preferred the present appeal contending that the order passed by the learned Commissioner is absolutely illegal, unjust and improper.

Mr. Dipak Dave, learned advocate for the appellant submitted that the learned Commissioner has not taken into consideration the evidence on record of the case in its proper perspective while partly allowing the application preferred by the original claimant. Mr. Dave has further submitted that the injury in question was caused during the course of employment, and the learned Commissioner ought to have taken into consideration the fact with regard to reduction in the earning capacity of the applicant before passing the impugned order. He has further submitted that the learned Commissioner ought to have given opportunity to the applicant to produce necessary evidence on record of the case in order to establish his claim against the opponents. Learned advocate has submitted that in view of non production of vital documents, such as disability certificate or expert's evidence, it is just and proper to remand the

matter to the learned Commissioner for reconsidering the entire issue afresh.

Respondents No. 1 and 2 are served but none appears on their behalf.

Mr. Hasmukh Thakkar, learned advocate for respondent No.3 vehemently submitted that there is no error committed by the learned Commissioner in partly allowing the application preferred by the original claimant and the impugned judgment and order does not call for any interference by this Court. Learned advocate has further submitted that ample opportunity was given to the applicant to adduce evidence, but as he could not avail of such opportunity, the same cannot, and need not, be given at this stage. It is the submission of learned advocate for respondent No.3 that the original claimant has not made out a case for interference with the order passed by the learned Commissioner and, therefore, the appeal is liable to be dismissed out of hand.

I have heard the rival contentions of the learned advocates at length and in great detail. I have also perused the impugned judgment and the record and proceedings of the case. On perusal of the record, it becomes clear that the claimant has neither produced any disability certificate nor has he examined any Doctor in respect thereof. Learned advocate for the appellant is right in submitting that in order to establish the reduction in earning capacity of the claimant, he was required to adduce requisite oral and documentary evidence. The same having been not done, I am of the considered view that this is a fit case to remand the

matter to the learned Commissioner, for re-consideration.

In view of the foregoing discussion, without examining the matter on merits and without recording any opinion on the reasons assigned by the learned Commissioner, the impugned order is quashed and set aside. The matter is remanded to the learned Commissioner for considering the entire matter afresh after providing full opportunity to both the sides to adduce evidence. Considering the fact that the case is of the year 1993, the learned Commissioner shall try to dispose of the case as early as possible.

With these observations, the appeal is disposed of as partly allowed to the aforesaid extent. There shall be no order as to costs.

The Registry is directed to return the Record and Proceedings to the learned Commissioner forthwith.

mathew [H.B.ANTANI, J.]